

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Petitioner, a state prisoner incarcerated at the California State Prison at Sacramento in Sacramento, California, has filed a petition for a writ of habeas corpus under 28 USC § 2254.

Petitioner was convicted by a jury in Solano County superior court of first degree murder and attempted robbery and was sentenced to life imprisonment without the possibility of parole. Petitioner unsuccessfully appealed the judgment to the California court of appeal and the Supreme Court of California, which on December 10, 2008 denied review. Doc #1 at 5.

II

A

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 USC § 2254(a). It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id § 2243.

B

Petitioner seeks habeas corpus relief by raising claims that the trial court erred in giving improper jury instructions and denying petitioner the right to cross-examine the prosecution's witness-in-chief at trial, and that the prosecutor violated petitioner's Fourteenth Amendment right by making degrading comments towards defense counsel. Doc #1. Because petitioner's claims appear cognizable under section 2254, they merit an answer from respondent.

III

For the reasons stated above and good cause shown,

1. The clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on respondent and respondent's attorney, the Attorney General of the State of California.

1 2. Respondent shall file electronically with the court,
2 within sixty (60) days of the issuance of this order, an answer
3 conforming in all respects to Rule 5 of the Rules Governing Section
4 2254 Cases, showing cause why a writ of habeas corpus should not be
5 granted. Respondent shall file with the answer a copy of all
6 portions of the state trial record that have been transcribed
7 previously and that are relevant to a determination of the issues
8 presented by the petition.

9 If petitioner wishes to respond to the answer, he shall do
10 so by filing a traverse with the court and serving it on respondent
11 within thirty (30) days of his receipt of the answer.

12 3. In lieu of an answer, respondent may file a motion to
13 dismiss on procedural grounds as set forth in the Advisory Committee
14 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If
15 respondent files such a motion, petitioner shall file with the court
16 and serve on respondent an opposition or statement of non-opposition
17 within thirty (30) days of receipt of the motion, and respondent
18 shall file with the court and serve on petitioner a reply within
19 fifteen (15) days of receipt of any opposition.

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21 IT IS SO ORDERED.

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25 VAUGHN R WALKER
26 United States District Chief Judge
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